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Ford, Henry Jones

Addresses delivered...

Lawyers Club, New York

[New York]

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ADDRESSES

DELIVERED BEFORE

THE LAWYERS CLUB  
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308  
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ON THE SUBJECT OF  
REPRESENTATIVE  
GOVERNMENT

By  
PROFESSOR HENRY JONES FORD  
and  
DOCTOR DAVID JAYNE HILL

SATURDAY, JANUARY 13th, 1917

in 13 N. July 2, 18

THE LAWYERS CLUB  
ONE HUNDRED AND FIFTEEN BROADWAY  
NEW YORK CITY

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# "REPRESENTATIVE GOVERNMENT"

MEETING OF  
THE LAWYERS CLUB

Saturday, January 13th, 1917

1:00 P. M.

Eugene C. Worden, Esq., Presiding

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WILLIAM ALLEN BUTLER, Esq., President of The Lawyers Club:

DR. DAVID JAYNE HILL, PROF. HENRY JONES FORD, MEMBERS OF THE LAWYERS CLUB AND LADIES:

George Washington gave us a great deal of valuable advice in regard to not interfering with the affairs of foreign nations when in his Farewell Address he warned us against "the insidious wiles of foreign influence" and that history and experience prove it to be one of the most baneful foes of Republican government. It is reported that once at a dinner party his host asked him why we had aped the Feudal Institutions of Great Britain to the extent of having a select, as well as a popular House in our Congress. His hostess had just helped him to a cup of tea, so hot that it was sending forth a cloud of steam. He poured part of his tea into his saucer and let it stand long enough to cool before drinking.

"This cup," said he, "is the House of Representatives. Its contents represent the people who may be in a great state of heat and excitement. This saucer is the Senate in which I hold the scalding liquid till its heat has subsided enough to make it safe to drink." Bismarck must have heard of this story of Washington's because he remarked on one occasion that the House of Representatives was like a June bug in a bottle.

At our last meeting we had the subject of "Nationalism" most ably presented. Today we have the subject of "Representative Government," a matter in which every thoughtful citizen is deeply interested.

The object of "Representative Government" is to express the will of the people. Sometimes we ask the question, Do our Representatives represent? This subject is replete with serious problems.

Mr. Eugene C. Worden is the chairman of the committee having this meeting in charge. I am sure we all congratulate him on having secured two gentlemen so pre-eminently qualified to address us on this subject on its historical as well as on its practical side. It is his privilege to introduce the speakers.

EUGENE C. WORDEN, Esq.:

MR. PRESIDENT, MEMBERS OF THE LAWYERS CLUB AND GUESTS:

Your Committee on Meetings and Speakers have taken their duties rather seriously. We have chosen, for the series of talks to be delivered this season, serious subjects. We had "Nationalism" last month. To-day our subject is "Representative Government," to be followed next month by, "International Relations and Economic Conditions after the War." We feel that these subjects are timely, weighty ones, and should be discussed by and presented properly for the Members of the Lawyers Club, who are an influence in the community. So your Committee for to-day have given their duties thoughtful and earnest consideration, and tried to get men who were qualified by study and exceptional opportunities through experience and observation, to deal with this subject of Representative Government, and I feel we are all very fortunate in having secured such men as Dr. David Jayne Hill and Professor Henry Jones Ford.

In asking Professor Ford to speak, and I will call upon him first, I might say that he has had many years of experience as a practical newspaper man. He was at one time a resident of New York, where he was an editorial writer on the New York Sun, and here and in other fields he has had great opportunity to observe the practical operation of politics and of our Government, and he now occupies the chair of Professor of Government at Princeton University, so he is eminently qualified to talk to us on this subject. I have great pleasure in presenting to you Professor Ford of Princeton.

ADDRESS OF PROFESSOR HENRY JONES FORD.

I feel quite sure that you will expect of me an attempt to give a scientific treatment of the subject, whatever the value of that may be. It ought to be something more than a statement of my own likes and dislikes, or a sermon appealing to your better nature, and it ought to be something that will move upon

a logical plane. The difficulty about that is that at present political science has no general principles which command universal acceptance. Sometimes you will find the most diverse conclusions arrived at starting from the same set of premises. For instance, some people will argue that all government ought to be abolished, and another set will argue that the government ought to do everything, and they will both tell you that they start from the same set of naturalistic premises introduced by Darwin and Spencer, and that their respective contentions have scientific value. Now, when such divergent conclusions are reached from the same premises, there must be something wrong somewhere. It is really a mark of the intellectual confusion of the day. Yet, unless I have some sort of a principle to fix what I have to say upon the logical plane, I shall be at a disadvantage in endeavoring to present this matter before you as I desire. But it so happens that there is a principle which, while it may be disputed in some quarters, I think will command the assent of this audience sufficiently to make it available for me, and upon it I will found what I have to say. It is this: In every kind of government, power must exist and be trusted somewhere. If you will grant that proposition, that is all I shall need for my case.

It is not necessary, of course, with our theme, to consider power in its arbitrary forms where it authenticates itself merely by its presence and activity. What we are concerned about is power as a public trusteeship. I think it will be admitted that the essence of a constitutional government is that it watches over the exercise of this trusteeship; that it provides means for holding it accountable for what it has done, and for enforcing its responsibilities. Here at once comes up the great problem of government, a problem which was so manifest from the very time that the idea of government on the public account was first developed, that it has been formulated in the well known proverbial saying which has come down to us from ancient times: "*Quis custodiet custodes—Who will watch the watchmen?*" This states the great problem of government. How are you going to arrange affairs so that those who watch over the exercise of public trusts shall themselves be subject to their responsibility to the public? If you will consider historically the answers that have been given to that question and analyze the solutions offered for that problem, you will find that they fall into two classes, and only two. One class is what might be called the multiple agency system. That is to say, by making such a partition and such a separation of power, distributed among particular agencies, that out of them will naturally issue checks and limitations, securing you against the abuse of power; and moreover, that the people shall themselves retain in their own hands as much power as possible, so that they themselves can appoint to office or remove from office, can initiate legisla-

tion or revoke legislation. That is one way of dealing with the problem. It admits of great variation in detail, in accordance with the particular agencies chosen, and the way in which they are grouped. Exemplifications of this type of government are afforded by the Greek City-State, the Roman Commonwealth, the medieval republics, our own country and its imitators in Central and South America.

There is another answer to that question, "Quis custodiet custodes?", and that is the answer given by representative government. It says, we will solve that problem by providing a set of watchmen, so conditioned that they they will have absolutely nothing to do, but to watch. They shall be so surrounded by constitutional safeguards in their position that they cannot vote themselves office and appropriations; they cannot participate in official patronage, and they cannot use office as a source or means of personal advantage, so that they will have to represent the people, and they will act in furtherance of the public welfare, because they cannot do anything else.

What, then, are the characteristics of representative government? To begin with, I want to beg of you not to identify representative government necessarily with the British Parliamentary system. That, of course, does belong to representative government, but there are other exemplifications of it in existence which do not have the parliamentary system, as in Switzerland and in German municipal institutions. The executive power may be developed inside of the Legislature as in the parliamentary system, or it may be developed outside as in Switzerland, and in German municipal institutions. The essential character of representative government is this: That the conditions shall be such that the representatives shall have no personal interest in appointments to office or appropriations; that they shall not have any personal participation in these matters. And then what follows? Why, inasmuch as they cannot get such things for themselves, they keep a very sharp watch over those who do have the power, over those who do make appointments to office, over those who do have access to the public treasury; and that is the whole secret of representative government. The mere name counts for nothing. It is simply the disinterested function that counts. There is another characteristic which is a necessary incident of this watchfulness; that is to say, that the administration of the government, no matter how it is constituted, shall be face to face with the representative Assembly at its sessions, for how can you watch and prevent violations of official duties, unless you can see and hear what is going on? That is an absolute condition of effective representative government, and history presents no case in which representative government has really existed without this contact.

As regards the origin of representative government, that is

rather a long story, and it so happens that I have been making a very detailed study of it, and I am rather full of the subject, so I have to watch my words carefully that they may not run away with me, but it will suffice for our present purposes, to point out to you that the notion that representative government is derived from Anglo-Saxon institutions, is wholly fallacious. This notion, which was widely extant at one time and which has been diffused through our popular histories, has no foundation in fact. Sound scholarship has shown that the phrase "Anglo-Saxon liberties" is a complete misnomer. Nothing could be further away from the actual facts. What actually existed was not popular liberty but gross and miserable servitude under the violent and oppressive rule of kings and thanes. The most ancient point to which you can trace the germs of representative government is the Norman Conquest, and it developed in England, not because of any special endowment of character possessed by the English people or race genius, but owing to particular circumstances. When William the Conqueror got possession of England, he was well aware of the difficulties that had been experienced on the Continent because particular vassals had great blocks of territory on which they could erect sovereignty. He took great care that nothing of the kind should happen in the country which he had conquered, and he made a wide distribution of holdings, so that nowhere could exist geographically a basis upon which a vassal could stand up against the Crown. Hence, in order to curb the royal prerogative, the Barons had to pool their interests and act together; hence, Magna Charta; hence, it was that Parliament was perpetuated, whereas on the continent all the feudal diets were swept away; hence, the admission of representatives of the people into Parliament; hence, the development of tendencies that finally established the ascendancy of the House of Commons, and gave the British Government its present democratic character.

Now, the question will naturally occur to you, if representative government was developed by the accidents of English political history, how was it that we failed to get it when, historically, we are an off-shoot of the English constitutional system? I think the explanation is this: That instead of being a primitive or an ancient thing, representative government is a very modern institution of government. It depends for its success upon jurisdictional advances, and the spread of popular intelligence, so that the type was not really completed until the 19th Century. And at the time that our government was formed, its principles were not distinctly perceived by politicians in general.

It is perfectly clear from the Federalist, that the leading statesmen who formed our National Constitution were well aware of the essentials of representative government, but they



had to deal with conditions as they found them to be. It was not as though they could do what they wanted to do. They simply did what they could. If the scheme of government had been adopted according to their original design, we should have had a form of government very much like that which Switzerland has since adopted. But they had to make changes and comprises to conciliate the small states, and those changes had a great effect upon our constitutional development. The particular compromise which had the deepest effect upon the character of the government was that which formed the Senate into an executive council, and provided that all appointments to office should be made with and by the advice and consent of the Senate. Now, that is peculiar to this country. It does not exist in any other countries. Isn't it clear that the practical effect of it is to interest the representative body in profusion instead of in economy? If the representative Assembly did not have any say with regard to appointments to office, would not their attitude be very different from what it is since they do have that participation? If they were shut out from personal participation, you may be sure that they would watch closely to see that the administration should not abuse the appointing power.

Another circumstance which had a very deep effect upon our political development, is one which is not in the Constitution at all; it was a development which was unexpected. When the Constitution was framed, it was assumed that the Executive Departments would have access to the Congress, and have an intimacy with its proceedings, just as had been the case with the Continental Congress. The Executive Departments, as originally conceived, were almost transcripts of the Executive Departments under the Articles of Confederation. If you will make the comparison, you will see that the Act creating the Treasury Department, was drawn not merely upon the lines, but in almost the exact language of the Act creating the Superintendent of Finance, the position occupied under the Articles of Confederation at a most critical period by Robert Morris, the financier of the Revolution. It was expected that whoever would hold the position of Secretary of the Treasury, would have the same direct and familiar access that Robert Morris had had to the Continental Congress, but in the struggle over the adoption of the Constitution jealousies were aroused and antagonisms were excited that were reflected in Congress, and at the first session these produced a determination to exclude the heads of the departments from the House of Representatives. That was a most fateful decision. From it dates the decline of the House of Representatives as an organ of control over the Government in behalf of the people.

To note all the consequences due to American divergence from representative government is impossible, since they affect every part of the political and social structure,

and are constantly extending. I shall note only four initial effects, two of them mainly concerned with the character of public service, and two of them mainly concerned with the character of public men.

The first point I want to make is that representatives having no power to vote to their own use offices and appropriations, are naturally watchful to see that those who do make appointments and appropriations, shall not be excessive in their demands. What is known in this country as "the legislative budget"—that is to say, the appropriation by the Legislature of a sum for its own purposes to be disbursed by its own officers—is unknown to duly constituted representative government. Practically it is unknown outside of the United States. The members of the British Parliament have no power to appoint a clerk or a page in their own service. It is an administrative function to supply such service as is really needed. Now, here is the way it works out in actual practice. In 1907, the net charge upon the public treasury for the British Parliament was \$1,330,000.00 against \$13,788,886.00 for Congress, although Parliament has 1285 members in its two houses while Congress then had 483. The British total includes everything. The American total omits large expenses thrown on executive departments of which there is no definite account. For instance, the cost of Congressional seed supplies is put on the agricultural department and the cost of Congressional mail matter is put on the Post Office Department.

Another circumstance is lucidity and comprehensiveness of public accounts. The administration, being present at the sessions of the representative body and exposed to its comment and criticism, avoids trouble by making budget statements so exact and complete that they speak for themselves. The effect is a statistical completeness that one may look for in vain in American public documents.

I suppose it is a rather difficult thing for most of you to lay hands upon British budget statements. It so happens that down there in Barbados, there is a relic of the 17th Century charter colonies. It is the only one of the West Indian Islands, that has its own autonomous government. It is a self-governing commonwealth, making its laws through a representative assembly. These are subject to some disadvantages that we should think very serious. For one, it is in the tropics. As you know, people have a notion that you cannot successfully maintain representative government in a tropical country. Another thing is that negro voters are in a majority in every precinct on that island, save one. But yet, under the representative system, and under the application of the British budget rule which disables a member of a representative assembly from proposing appropriations or having anything to

do with appointments to office save in the way of criticism, the practical results are such that I do not know of any public document in this country that can match in lucidity and comprehensiveness, the Barbados Blue Book that is annually laid before the representative assembly. You may be your own judge upon that point, because all you have to do is to go to the New York Public Library and ask for that book. It is on file there. There you will see how representative government, acting with material which is not generally considered superior in quality, brings about lucidity and comprehensiveness in accounts.

Another point is that representative government, when it is the real thing, and is not merely a spurious imitation, protects the personal independence of representatives. With us, you all know what happens when a man has the misfortune to be elected to such an office as member of the City Council, or member of the State Legislature, or a Representative in Congress. It means that job hunters simply camp on his trail, and follow him indoors and outdoors, day and night. He will have no peace in his life. If you go into the lobby of any State House about the time when the Legislature is organizing, you will note how difficult it is to go through the mob of office seekers. They all know that the members will get their share of the appointments to be made for the Legislative body. They know that such jobs as those of clerks, pages, doormen and charwomen, etc., will be handed out, and every member will have followers who are desperately bent on getting their bit. Under the representative system, representatives are absolutely protected from that sort of thing. There is nothing doing in that line. The Representative has no offices to give out and no appropriations to propose. When that result is not secured by the budget system, as in England, the law takes great pains to protect members. For instance, if you examine the German municipal code, you will find that while the law permits a municipal council to create unpaid offices in its own service, as soon as a salary or an emolument is attached to an office, the law provides that it is to be filled by executive appointment. Isn't it clear that the members are not going to create needless offices for the Executive to fill of its own motion, and isn't it also clear that with that fact known men of high character and principle are the more willing to engage in German municipal service? They are not going to be pestered and worried to death by job hunters. In the Berlin City Council, at one time, was a professor of international reputation, of great ability but who was rather irascible and testy. I suppose that under the American system, he would have blown up at once. He would never have sat for a day in the Council, if he could have been annoyed on every hand by job hunters and "pork" grabbers. A repre-

sentative system extends protection to a man like him. When there is nothing doing in the way of jobs, people are not going to waste their time in pestering those who are absolutely unable to act as an employment agent. The quality of power is always determined by the conditions under which it acts. Representative government so conditions the activities of members that they cannot be converted into employment agents, "pork" grabbers and seed distributors, and they are able to give their time to public affairs.

Here is another consequence, and that is the last one I will mention. They are really innumerable. It is the freedom of deliberation.

The fact that representatives are disabled from introducing measures proposing any appropriations or creating any salaried office of itself shuts out most of the bills congesting American legislative calendars. Add to this that the conditions make either explanation or criticism of measures the most advantageous way of obtaining personal distinction and the natural tendency of members is to put upon the administration the work of preparing and presenting public bills. This tendency has attained its most extensive development in Switzerland where it has become the practice of members to refrain from presenting bills but to leave all bill draughting to the administration, and it has become the practice of the administration to publish the text of measures it intends to submit. Should the administration fail to present a measure which members may desire the ordinary expedient is to offer a resolution calling on the administration to prepare that measure. Although the Swiss Congress amends measures freely, in that matter too it makes use of the administration which retains charge of the bill and shapes its language in accord with the instructions voted. It is obvious that the system precludes "jokers."

The members of the Swiss administration have an absolute right to appear before the Congress and explain their measures. Those other matters all appear to have grown up through usage as a result of this condition, and as things now stand, few bills are introduced by members of the Swiss Congress. They meet in session several times a year. The advance publication of administration measures enables public opinion to mature in regard to them. By the time a measure is actually brought into Congress, it has already gone through a period of incubation, during which the best thought and experience of the country have been brought to bear upon it, and the consequence is that when the Congress meets the members get right down to business. Why, the sessions of the Swiss Congress sometimes only last three or four weeks. Naturally, they can meet more often, and they hold at least two sessions a year, and generally three. Swiss legislative bodies

have ample time to consider all legislation proposed, and there is no complaint concerning hasty or ill-considered legislation, or any lack of definiteness in the measures passed. The whole process has been brought into the light, so that there cannot be any fear of any measure not receiving the attention due it.

The devastating flood of legislation in this country has received so much attention from bar associations that I thought some comparative statistics might interest you. During the session of the British Parliament extending from November 11, 1914, to January 27, 1916—a period of over fourteen months—182 bills of all descriptions were introduced in the House of Commons and 49 came over from the House of Lords, a total of 231, most of them government measures. The first session of the present Congress,—that is the 64th Congress, whose second session is now under way,—began December 6, 1915, and ended September 8, 1916, a period of two days over nine months. You see, there are nine months as against fourteen. In that time, 17,798 bills were introduced in the House and 7,020 in the Senate, a total of 24,818 bills and there were in addition 477 joint resolutions and 86 concurrent resolutions.

These concurrent resolutions they have in Congress, have always interested me. The Constitution of the United States says that any order, resolution or vote to which the concurrent action of both Houses shall be necessary, shall be presented to the President of the United States, and shall be subject to his veto, but these gentlemen, our representatives, have invented a resolution which they call a concurrent resolution, and which they say does not have to be submitted to the President, and does not have to be exposed to his veto, and a great deal of action bearing directly upon expenditures in the relation of the two Houses may be accomplished by these concurrent resolutions.

The average number of bills that are presented in a Canadian Legislature is about 150. I think that they rarely run as high as that; the number is rather irregular—they may be only 40 or 50. In an American Legislature, they run from about 1,200 to 1,500 in a small state, and from 4,000 to 5,000 in a large state. It is difficult to get statistics of our American Legislative bodies, but I do not think I have overstated the case. The bearing of such conditions on the ability of members to take deliberate action and to keep to the regular order, is manifest.

It has been calculated that it would take Congress over sixty years to go through the legislative calendars of one session, taking the bills in regular order. Hence the growth of special privilege and exclusive opportunity in the management of legislation. Hence the multiplication of offices and the distribution of "pork"

to keep members tractable and obedient to the exigencies of the system.

We are now experimenting with the multiple agency system, and the thing works in a vicious circle. New agencies are created because of distrust of existing agencies of government, and as you multiply agencies you increase the cost of government, and this reacts on the character of legislative bodies, and makes the people more distrustful of them than ever. When you consider that money does not grow out of the ground like weeds, nor does it drop from the heavens like manna, isn't it clear, then, that the more agencies you have, the more elections you hold, the greater is going to be the cost of government? That is a perfectly simple economic proposition. We have created a situation which is like that caused by hydrostatic pressure. If you put great pressure on water, you can drive it right through the pores of steel. When you put such pressure on your political system, as results from the great burden of expense attending your primary elections, and your conventions, and your multiplication of agencies in the political field, the result is not at all doubtful. It will be felt in every board, every commission, every agency of power, debasing their character and impairing their efficiency.

In closing, let me say that the true cause of the public discontent is that we do not have representative government in this country, and those discontents will not be removed until we do get representative government.

EUGENE C. WORDEN, Esq.:

We are very grateful, I am sure, to Professor Ford, for his very admirable address on this subject. He has not made us American people unduly happy, I think, nor optimistic over the present situation and state of affairs, but I believe facts are facts, and must be faced. Maybe Doctor Hill can cheer us up a little bit, although I do not know whether he can.

Doctor Hill has favored us greatly by coming up here to address us today. I shall say just a few words in introducing him to you. He has had a very extensive experience in the study of the very subject we are discussing today, and has had an excellent opportunity both as a student and as an official, to observe the various forms of government throughout the world.

The experience he has had as Assistant Secretary of State of the United States, and likewise as Minister to Switzerland, and Minister to The Netherlands, and later, as American Ambassador to Germany has given him a very great opportunity to study forms of government both in this country and abroad. He is also an extensive writer on the subject of government.

Many of us are familiar with one of his recent books: "The People's Government."

In introducing Doctor Hill I really do not know whether to say he is Doctor David Jayne Hill of Rochester, where he has been a University President, of Washington, where he has been an official and lived for years, or Europe. I do not know but what, perhaps, I had better say, Doctor David Jayne Hill of the world,—A citizen of the world.

I present to you Doctor Hill.

#### ADDRESS OF DR. DAVID JAYNE HILL.

MR. CHAIRMAN, MEMBERS OF THE LAWYERS CLUB, AND GUESTS: I have, Mr. Chairman, no local habitation.

I have been greatly interested in the discussion of this subject of representative government, by Professor Ford. He has spoken of the confusion of thought in our country upon this subject. He might also have spoken of the absence of it.

It is a long time since the American people have indulged in the habit of thinking institutionally. We are accustomed to thinking under the control of our own personal desires and interests.

In speaking on this subject of representative government today, while I should like to say a number of things that have been suggested by Professor Ford's discussion, my point of view is somewhat different, and I am very glad that I chose a somewhat different field; but in speaking of over-legislation as he has, and of the cost of it, he has opened a vast subject, which does not come within my present purview, but upon which I have at least one remark to make.

Fine as it is for the good people of this country to nominate their elective officers, the duplication of elections, first in a primary and then in an electoral campaign, practically excludes from high elective office in the State and in the Nation, anybody who has not a large fortune, or who can command large fortunes, to meet the expenses of a primary and electoral campaign.

I am in hearty accord with the points of criticism that Professor Ford has made upon the basis of practical organization, and the great cost in time and money, and results of our representative system. Notwithstanding that, I have a great admiration for the American system. I think it is a fine thing that the lawyers of this Club are disposed at this time, to discuss this subject. You certainly are interested in what the future of law in this country is to be. In inviting me to participate in the discussion, I have been rather surprised that I should receive this honor, not being a member of the Bar, but I suppose I have been asked to come here largely because I have somewhat closely studied government in some other countries, and perhaps most of all, because I have

returned to my own country with a great admiration for it, for its history, and for its principles, in spite of its defects.

In these times when what little thought there is of such a radical nature, and of such a highly speculative character, it is a great thing to come back to our remotest past. It is a fortunate thing, perhaps, that we approach this discussion at a time when we are not engaged in an electoral campaign, and I feel very free personally, to say some things now that I should not have felt so free to say two months ago.

There are prejudices that block the way to truth,—but now, at this moment, we are free from any obstacles of that kind, and we can discuss this subject freely, good-humoredly, and in a thoroughly non-partisan sense. In what I have to say to you in the few moments during which I shall detain you, I shall divide the time between some observations regarding other countries, and a short discussion of our own constitutional system.

Some importance should be attached, I think, to the fact that wherever in the world absolute government, in the form of despotism, has been abolished, it has been through the influence of representative government in some form, good or bad, perfect or imperfect. There is now, at this time, no country in the world which claims to have a constitution, which does not claim to have some kind of a representative government. Most of the criticisms that have been passed upon it are based upon its failure to produce the results that were expected of it, but whenever they are examined in detail, in each case, I think it can be found to have failed either, first, because of the absence of some corrective device to give stability to popular representative government, as in the case of France, or in its being treated as a practical inoperative system, a sort of concession to public opinion as in Germany, or in its being considered as a sort of automatic mechanism which can start itself and stop itself at the right time without much human supervision, as in the United States.

In France, for example, it controls the whole government with such completeness, and so promptly expresses the mobile state of public opinion—and in normal times, when the Gallic nature is not under the stress and strain of a great public calamity as at the present time, French sentiment is very mobile—that a few votes in the Senate and Chamber of Deputies may completely change the whole government several times in the same month.

The President being practically without power and the ministry depending upon the support of the Assembly, there is, repeatedly for short periods, no government at all in France, and were it not for the tenacity of routine traditions in the administrative offices, and the sound practical judgment of the French judges, the Republic, which properly speaking, has no constitution but rests upon a few organic laws, would be plunged into the utmost confusion. But it may be said that with all this mobility of feeling in France, which acts so suddenly and destroys the government so

quickly, there is in the Gallic mind, a logical quality, a devotion to great ideas represented in the courts of France, that give it a great steadying quality.

Now, in the German Empire, the exactly opposite condition prevails. There every good and perfect gift is believed to come down from above. The Reichstag, though elected by universal suffrage and secret ballot, is in effect, little more than a debating society with very strict rules of debate, with power to obstruct new legislation, but obliged to submit all its own proposals to the Bundesrat, a non-elective body representing the sovereigns, before it can act upon them. This is just what Bismarck, who hated parliamentary government, intended it to be, and as Professor Ford has reminded us at the table, he compared it to a watering pot of phrases—the Reichstag.

Now, in The Netherlands, that wonderful little monarchy, with various strictly Republican traditions, the people freely choose their representatives by practically universal suffrage, but, having done so by a unique, and as it seems to me, an excellent provision, they are prohibited from influencing their deliberations and decisions. They cannot influence the deliberations of their Parliament in any degree whatever. The members of the two Chambers are required by the Constitution, "to vote without instructions from or conference with those who elect them," which excludes absolutely the intrusion of special interests of every kind and renders impossible the institution known at Washington as "the lobby," the privileges of which are at present permitted to be enjoyed only by those who are supposed to control a considerable number of votes.

In addition, the Dutch legislator is required to take a solemn oath on entering office that he has not received or given, and that he "will not accept directly or indirectly, any gift or present from any person, to do or to refrain from doing anything in this office." Now, the result of this in, first of all, great care in selecting members of the legislative bodies, followed by a high consideration for the welfare of the whole people, free from every form of personal interest in the parliamentary deliberations, and a disciplined and statesmanlike conduct of public affairs that would do honor to any nation.

Finally, I have mentioned the representative system has appeared in sufficient abundance in the history of the world, and it is some while they are conducting their work, without the slightest compromise of the principle of universal suffrage, and without the slightest interference by the great thought in their countries. In Switzerland, where the people have been so long and so completely free, the direct legislation seems to be somewhat in contradiction with rep-

resentative government; but, in fact, representative legislation, though affected slightly, is not affected profoundly by the direct system.

In this Confederation of 22 cantons, many of them with a very small population, the most ancient legislative customs are those of the local *Landesgemeinde*, or *Folk-meet*, where as in a town meeting the male population was wont to meet, and in the smaller cantons like Appenzell still does meet, *en masse*, to transact public business, pass local laws, and elect administrative officers for the community. The present government of the Confederation, resting upon the Constitution of 1874—in which many of the ideas were taken from the Constitution of the United States—includes the Federal Assembly, a law-making body; the Federal Council, a directive and executive body of seven members; and a Federal Court, charged with the administration of justice in Federal matters.

Now, in the United States, an impression has been created that the Swiss Confederation is governed in the main by direct action of the people through the initiative and referendum, and that it is the system that prevails in the government of Switzerland. Let me say, by way of diversion, that while I was Minister there, a distinguished American citizen, Mr. William Jennings Bryan, appeared with a request that he might be presented to the President of the Confederation, and after that presentation had been made, he said to me, "I am much interested in the initiative and the referendum; I want to be able, when I go back to the United States, to say that I have conferred with the Minister of the Swiss Government upon that subject."

Thereupon, I took Mr. Bryan to a young gentleman who was familiar with the subject, and in about twenty minutes, he closed his notes with complete satisfaction, and came home to advocate the initiative and the referendum for the United States. I really flatter myself that I helped Mr. Bryan accidentally, and not too intentionally, to a new idea.

But the notion that this system of direct government prevails in all the cantons of Switzerland is a great mistake. It is far from being the case with the referendum in Federal matters, that the Federal Government has not formally introduced into the Constitution and is determined by the Federal Assembly without popular participation. The Federal Government has not introduced the initiative, or which only 12 were adopted, while 12 were rejected.

The only election in which the initiative was used in these decisions is in the election of the President of the Confederation, in which case the Federal Government has introduced the initiative, and the Swiss railroads, 80 per cent, the largest proportion ever attained.

Conquest, perhaps, but I will not go back as far as that, but which English practice by electoral reforms in later years following American example was greatly to improve.

2. The division of powers,—that is, a distribution of public powers established by law in such a manner as to prevent the absolute control of government by any one of its agencies.

3. The guarantee of personal immunities—the rights of free speech; freedom of the press; of peaceable assembly; of petition for redress of grievances; of bearing arms; of security of persons, houses, papers and effects against unreasonable search; of trial by jury; of not being twice put in jeopardy of life or limb for the same offence; of refusing to bear witness against oneself; of not being deprived of life, liberty or property, without due process of law; and many other guarantees never before secured in any country by fundamental law.

Now, these are not borrowed from England; England had no such fundamental law. England had the Great Charter, but the Great Charter permitted any right or liberty to be taken away from the Englishman by the judgment of his peers, but the Constitution of the United States lays it down as a rock bottom principle that these liberties and others may not be taken away from the American citizen by the judgment of his peers. They are his. They are his forever, and they cannot be taken away.

4. Judicial protection of the constitutional guarantees,—a unique provision never before provided for in any charter of human liberty—by which the Government, and even a majority of the people, or their representatives, cannot legally render valid the invasion of those immunities by any subsequent act of legislation.

Now, by this combination of guarantees and the provision for their protection, the Constitution of the United States gives to representative government, a perfection that it had never before possessed, by placing upon the people's representatives a body of legal restraints that forbid their disregard of these primary rights and liberties, to secure which our independence as a nation was declared, and to maintain which the Constitution was adopted.

It is a fact of the utmost significance that after having been held in reverence for a century and a quarter, and having brought the nation to the position of unity, power and prosperity it has now attained, the Constitution should have been subjected in recent years to a series of attacks directed against each of the four cornerstones of our Government. It is a sad commentary upon the patriotism of the country that these attacks should come at all, and to one who has lived in other countries, and defended the Constitution, by force, had to come home to see violent assaults upon it in a manner so completely unbecoming to a free people in form, and always crude in substance, should have been permitted to continue and endure now these dozen years, for purely

political motives, and never should have been adequately met and resisted by the union of intelligent citizens.

For representative government, the neologists—who would not know themselves under that name, perhaps—would substitute direct government by a majority of the people, by means of the initiative and referendum, and the recall of public officers, particularly judges. For the division of powers they would substitute the concentration of power in the hands of the executive, in order that through his urgency, through his control of the elective representatives of the people, he may promptly override the judgment of these representatives freshly chosen by the people, and often in disapprobation of the President's course, and without discussion, formulate into laws demands pressed home upon him by private or class interests, with the certainty of political consequences in case of really independent action on his part.

For the guarantees of personal immunities contained in the Constitution, they would substitute what they call a "Gateway Amendment," opening the door for the absolute will of a majority of the voters, which would be empowered to change the Constitution at any time, to insert any restrictions upon personal liberty and the rights of great states that have been reserved to them by the Constitution.

Finally, they would practically abolish the Supreme Court of the United States by denying its authority to declare unconstitutional any law, regardless of its conflict with the present constitutional guarantees.

To many minds, it is incredible that any of these things should actually happen, but the public, generally, is not aware of the forces that are quietly working to accomplish these ends. Society after Society has passed and published resolutions that any judge that declares any act of any legislative body, or any act of direct legislation where that is possible, to be unconstitutional, should be recalled from the bench.

It is not possible, within the limits of the time at my disposal, to convey a conception of the extent, the violence, and the persistence of these attacks upon all that is characteristic of our fundamental law, or to point out the dangers to our republic, if these attacks should ever prove effective and transform our government of laws into a government of men.

But I have no right to speak in generalities. What I am trying to convey is so remote from many minds, that it would be necessary to speak very concretely. I will, therefore, let the Honorary President of the National Populist Government League, who is present here, endorse, I believe, several hundred thousand supporting members, and claiming to control two million votes, propose to promote the initiative, referendum and recall and the "Gateway Amendment" speak for himself. This gentleman, the Honorable Senator Owen

of Oklahoma, having declared in a meeting of the League recently held in Washington that it is "unparalleled impudence for the Supreme Court of the United States to declare unconstitutional any act of Congress," and being reminded that he might be held in contempt for his remark, is reported to have said: "Let them dare to summon me, and I will start a row that will shake this continent to its very foundations," adding, "Do we want gattling guns sweeping the streets of our cities?"

I offer no interpretation of these remarks and I refrain from comment upon them, further than to say that if this Society is contemplating revolution and foresees a use for gattling guns, it is more dangerous even than I have supposed it to be.

On January 8th, the same Honorable gentleman introduced into the Senate of the United States a resolution in which it is declared that "the Constitution of the United States gives no authority to any judicial officer to declare unconstitutional an act which has been declared constitutional by a majority of the members of the United States Senate and House of Representatives and by the President of the United States who, on their several oaths, have declared the opinion in the passage of such act that it is constitutional"; that is, declared it constitutional by passing it, and he demands that any Federal judge who declares any act passed by the Congress of the United States to be unconstitutional, be declared "to be guilty of judicial usurpation," and to have "vacated his office."

Gentlemen, you may not attach great importance to this voice from Oklahoma, but I assure you that it is important, that it is very important. I shall not at this time attempt to offer any argument upon this subject, which is common with others of higher authority. I have discussed elsewhere, but the Revolutionary character of this resolution, and of the action that are behind it, cannot and certainly will not be overlooked by those whose business in life it is to guard the sanctity of the laws.

The import of the various assaults upon our fundamental law and the disposition to emasculate or abandon it is evident to every well-instructed mind. The misfortune is that there is among our fellow citizens, who in the end, knowingly or unwittingly, must decide these issues, so little familiarity with these questions, with these difficult constitutional questions. The subject is almost neglected in our colleges, except at Princeton, of course, and almost entirely unknown in our schools, and a generation is growing up that does not know the Constitution from an Egyptian Obelisk.

It is now about two years since the National Association for Constitutional Government was organized by a small company of thinkers and business men, who have, since that time, been busy with the purpose of enlightening the public upon the changes proposed with reference to our fundamental law, and the consequences that would naturally follow and flow from their adoption.

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This attack upon the judiciary, which the Association has already met and answered in one of its publications, is alone sufficient to justify the existence of the Association, but this is only one of the many revolutionary projects which have to be fully considered. If this Association were not already in existence, it would be imperatively demanded by the emergencies of the hour.

Over the judge's chair in one of the court rooms of Massachusetts, hangs the motto: "Here speaketh the conscience of the State, restraining the individual will."

It is a time when in this country the conscience of the State should not be silenced. It is not, surely, a propitious time, in the midst of the violence and commotion that now agitate the world,—a violence and a commotion that may, against our will as a pacific people, draw us suddenly and unexpectedly into the vortex—to nullify the influence of this nation, or to divide its strength by abolishing our form of government. This is rather a time for fearless and united action to sustain, strengthen and promote the institutions of justice, and to see that the ermine of the judge be not defiled by the hands of politicians. If our Constitution requires a change, well and good; let us discuss it calmly and deliberately, and give the specific reasons for it, but let us not abolish the guarantees of our freedom, or drag justice from its seat because it dares to proclaim the law.

A. H. SPENCER, Esq.:

I have seldom had the good fortune to listen to so lucid, so strong, and may I say, so corrective a treatment of a topic of discussion as that which has just been delivered to us, and I feel that I only partially reflect the sense of appreciation and the gratitude of those gentlemen, the Lawyers Club and our friends, when I move a vote of thanks to Doctor Hill and Professor Ford, for their discussions.

PERLEY MORSE, Esq.:

I second the motion.

EUGENE C. WORDEN, Esq.:

Gentlemen, you have heard Mr. Spencer's motion, which has been duly seconded. All in favor of the motion will express it. The motion is unanimously carried. The meeting stands adjourned.

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